

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF
CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

December 13, 2013

CDUP: KA-3509
TE: KA-13-05

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Time Extension Request (**KA-13-05**) for Conservation District Use Permit (**CDUP**) **KA-3509** regarding a third (3rd) time extension request to initiate and complete construction of a Single Family residence (SFR)

**PERMITTEE/
LANDOWNER:** Matthew and Judy E. Malerich Trust, Bakersfield, CA

LOCATION: Hā'ena, Hanalei District, Island of Kaua'i

TMK: (4) 5-9-005:025

**AREA OF PARCEL/
USE:** 14,514 ft² / 3268 ft²

SUBZONE: **LIMITED**

BACKGROUND:

On *October 23, 2009*, the Board of Land and Natural Resources (BLNR) approved the Conservation District Use Application (CDUA) **KA-3509** for the construction of a single family residence (SFR) on the subject parcel. A Conservation District Use Permit (CDUP) was issued and was subject to twenty (21) terms and conditions. Condition six (6) provides that, *any work to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the department; further, all work and construction must be completed within three (3) years of the approval.* Under this CDUP condition the applicant had until *October 23, 2010* to initiate construction and until *October 23, 2012* to complete construction of the SFR.

On *November 15, 2010* the BLNR approved of a two (2) year extension to the initiate construction and complete construction deadlines under Time Extension (TE): **KA-11-01**; this provided the applicant until *October 23, 2012* to initiate construction and until *October 23, 2014* to complete construction of the SFR.

Additionally, on *July 13, 2012* the Board of Land and Natural Resources (BLNR) approved a second Time Extension request, TE: **KA-12-10**, subject to the following conditions:

1. *That condition six (6) of CDUP KA-3509 is amended to provide that Matt and Judy Malerich will have until October 23, 2013 to initiate construction of the approved SFR and must complete construction by October 23, 2015;*
2. *That all other conditions imposed by the Board under CDUP KA-3509, as amended, shall remain in effect; and*
3. *That no further extensions be given to initiate construction.*

TIME EXTENSION REQUEST:

On *June 20, 2013* the Office of Conservation and Coastal Lands received a third (3rd) Time Extension request from the applicant to extend the initiate construction and complete construction deadlines approved under TE: **KA-12-10**. Supporting documentation, required under Hawaii Administrative Rules (HAR) §13-5-43(c), was provided to this office which states that even though the Maleriches have made substantial progress and expenditures, in a good faith effort to commence construction by the current deadline, unexpected circumstances and delays in the County permitting process has prevented the applicant from obtaining the necessary permits and initiating construction within the approved deadline.

An affidavit from the applicant states that:

- *We have been in the process of permitting and installing a water meter on the property;*
- *The plans call for drilling under the road to put in the waterline and contractor cannot do this until October. Following installation there will be scheduled inspections, which also will take a period of time.*

After a discussion with the *County of Kauai Water Department, Construction and Inspection Division* this past summer, staff from that office indicated that the applicant's contractor was unable to start construction of the SFR on the parcel until the end of 2013. The County of Kaua'i has stated that there are no current permitting issues with this project.

At this time the Maleriches are requesting an additional one (1) year time extension to both the initiate construction and complete construction deadlines. If this third (3rd) time extension request is approved the applicant will be required to initiate construction by *October 23, 2014* and complete construction by *October 23, 2016*.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in Hawaii Administrative Rules (HAR), §13-5-43, which allows for a permittee to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

Additionally, pursuant to HAR §13-5-43:

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant;

(c) Time extensions may be granted by the board upon the second or subsequent request for time extension on a board permit, based on supportive documentation from the applicant; and

(d) Unless otherwise authorized, all time extensions shall be submitted to the Department prior to the expiration deadline.

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when a permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a permittee demonstrates some sort of hardship or delay in initiating work on a particular project or if more time is required to continue the project as proposed. Moreover, the permittee should be able to demonstrate to the BLNR and Department that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project under the approved conditions.

DISCUSSION:

This proposal is for a third (3rd) time extension for the start and completion of construction for a Single Family Residence (SFR) located in Hā'ena, Kaua'i. The landowners have stated that the county permitting process has taken longer than expected due to the siting of utilities and other personal issues. It should be noted that approval for the SFR was granted by the BLNR on October 23, 2009; if this time extension is approved the landowner would have seven (7) years from the original approval date to complete the construction of the SFR.

The shoreline certification, which assists the state and county in the determination of shoreline setbacks, will be five (5) years old by January, 2014. Shoreline certifications are only valid for one year after completion pursuant to HAR §13-222.

According to the CDUP KA-3509, the landowner was required to resolve an issue with the placement of sandbags at the shoreline. A site visit in October, 2011 by OCCL staff observed that the sandbags were still in place; at this time there is no correspondence or

indication that a determination has been made regarding this matter. Staff believes the applicant still needs to resolve the issues associated with the County of Kauai Emergency SMA Permit (E)-97-03.

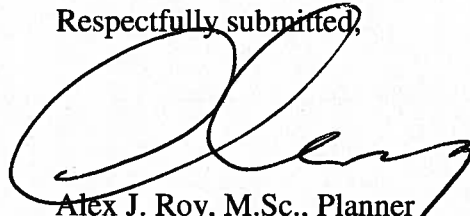
Staff, therefore, has the following:

RECOMMENDATION:

That the Board of Land and Natural Resources (BLNR) APPROVE a one (1) year time extension to the **CDUP KA-3509** initiate construction and complete construction deadlines, located in Hā'ena, Hanalei District, Island of Kaua'i on TMK: (4) 5-9-005:025, subject to the following conditions:

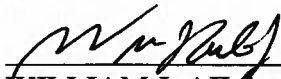
1. That condition six (6) of **CDUP KA-3509** is amended to provide that the *Matt and Judy E. Malerich Trust* will have until October 23, 2014 to initiate construction of the approved SFR and must complete construction by October 23, 2016;
2. That all other conditions imposed by the Board under **CDUP KA-3509**, as amended, shall remain in effect; and
3. That no further extensions be given to initiate construction.

Respectfully submitted,



Alex J. Roy, M.Sc., Planner
Office of Conservation and Coastal Lands

Approved for submittal:



WILLIAM J. AILA, Jr., Chairperson
Board of Land and Natural Resources